

Message Text

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TO AMEMBASSY LIMA

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FOLLOWING SENT SECSTATE INFO USUN, BANGKOK, MADRID, QUITO, WELLINGTON, NEW DELHI, OSLO, NAIROBI, ATHENS, YAOUNDE, MOSCOW, REYKJAVIK, LUSAKA, KAMPALA FROM GENEVA ON JUL 26, RPTD TO YOU:

QUOTE

E.O. 11652: N/A

TAGS: PBOR, UN

SUBJ: LOS: SEABED COMMITTEE MTG, SUBCOMITTEE II
AND WORKING GROUP, JULY 25, 1973

1. SUMMARY: COMPARATIVE TABLE OF PROPOSALS BEFORE SUBCOMMITTEE WAS DISTRIBUTED IN ENGLISH. DISCUSSION ON FISHERIES HAS APPARENTLY BEGUN IN WORKING GROUP AND US INTERVENED IN SUPPORT OF SPECIES APPROACH. ZAMBIA AND UGANDA INTRODUCED LANDLOCKED PROPOSAL. SEVERAL REPS COMMENTED ON PROPOSALS RECENTLY SUBMITTED AND SOME EXERCISED RIGHT OF REPLY. US DELIVERED ADDRESS ON FREEDOM OF TRANSIT THROUGH AND OVER INTERNATIONAL STRAITS.

2. THAI REP SPOKE IN SC-II WORKING GROUP ON QUESTION OF DELIMITATION BETWEEN OPPOSITE AND ADJACENT STATES WHICH HE BELIVED WAS MORE COMPLICATED AND DIFFICULT ISSUE THAN OUTER LIMIT OF CONTINENTAL SHELF OR ECONOMIC ZONE. HE
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COMMENTED ON VARIOUS PROPOSALS COMCERNING DELIMITATION AND CONCLUDED THAT IF PARTIES COULD NOT AGREE MOST CONVENIENT PRINCIPLE AS A GENERAL RULE WAS EQUIDISTANCE, BUT THAT SPECIAL CIRCUMSTANCES SHOULD BE TAKEN INTO ACCOUNT.

KEY PROBLEM WAS HOW TO DETERMINE BASE POINTS FOR MEASUREMENTS. HE SUGGESTED THAT HISTORIC TITLE COULD CONSTITUTE SPECIAL CIRCUMSTANCES IN MAKING EQUITABLE DELIMITATIONS.

3. SPANISH REP DELIVERED LONG, THOUGHTFUL ADDRESS ON NATIONAL RESOURCE ZONE. COASTAL STATE HAD RIGHT TO ESTABLISH MARITIME JURISDICTION BEYOND TERRITORIAL SEA BUT HAD TO TAKE INTO ACCOUNT FISHING ACTIVITIES OF FOREIGN STATES. FAIR EQUILIBRIUM HAD TO BE FOUND BETWEEN INTERESTS OF COASTAL STATES AND INTERNATIONAL COMMUNITY. THERE WERE FIVE PRINCIPAL INTERESTS INVOLVED: (1) MAINTENANCE OF TRADITIONAL FREEDOMS OF HIGH SEAS SUCH AS FREEDOM OF NAVIGATION, OVERFLIGHT, AND LAYING OF SUBMARINE CABLES;

2. PRESERVATION OF MARINE ENVIRONMENT INCLUDING TAKING INTO ACCOUNT RECOMMENDATIONS OF COMPETENT INTERNATIONAL ORGANIZATIONS; (3) EQUILIBRIUM OF RIGHTS CONCERNING SCIENTIFIC KNOWLEDGE AND TRANSFER OF TECHNOLOGY AND TRAINING (ALTHOUGH COASTAL STATE WOULD AUTHORIZE ANY SCIENTIFIC RESEARCH ACTIVITY); (4) CONSERVATION OF RESOURCES OF ZONE, PARTICULARLY TO AVOID DEPLETION OF LIVING RESOURCES; (5) EXPLOITATION OF RESOURCES IN ZONE TAKING INTO ACCOUNT LAND-LOCKED DISADVANTAGED STATES INTERESTS AS WELL AS THIRD STATES' PARTICIPATION. RENEWABLE AND NON-RENEWABLE RESOURCES WERE DISTINGUISHABLE AND CERTAIN SPECIES OF FISH MIGHT MERIT SPECIAL TREATMENT. DISTANT WATER FISHING COULD CONTINUE UNDER CERTAIN CIRCUMSTANCES IN ZONE AND COASTAL STATE SHOULD ALLOW OTHERS TO CATCH FISH NOT NEEDED BY COASTAL STATE. REP STATED THAT QUESTION OF LIMITS WOULD LOSE MUCH OF ITS IMPORTANCE IF SUBCOMMITTEE SOLVED NATURE OF REGIME FOR ZONE. SPAIN WAS WILLING TO ACCEPT LIMITS ACCEPTABLE TO MAJORITY WHICH APPARENTLY WAS 200 MILES.

4. PERUVIAN REP DISCUSSED FISHERIES ARTICLES SUBMITTED BY SIX-POWERS (A/AC 138/SC.II/L.38). EP NOTED THAT PERUVIAN APPROACH WAS DIFFER FROM THIS WORKING DOCUMENT UNCLASSIFIED

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MENT. HE THEN COMMENTED ON EACH ARTICLE AND ENDED UP BY NOTING THAT SINGLE CONVENTION ON LOS WAS CONTEMPLATED.

5. US REP (AMB. DONALD L. MCKERNAN) WAS ENCOURAGED BY NUMBER OF DRAFT ARTICLES SUBMITTED ON RENEWABLE RESOURCES OF THE SEA. SIX-POWER PROPOSAL, IN PARTICULAR, WAS CONSTRUCTIVE DOCUMENT WHICH HAD STIMULATED DISCUSSION. COMMENTS BY DELEGATES FROM SPAIN WERE INTERESTING AND HELPFUL. NEVERTHELESS, US HAD NUMBER OF QUESTIONS. US WAS CONCERNED WITH CONSERVATION AND MAINTENANCE OF MAXIMUM YIELD AS WELL AS EQUITABLE ALLOCATION OF LIVING RESOURCES. US BELIEVED COASTAL STATES SHOULD HAVE JURISDICTION OVER CERTAIN STOCKS OF FISH, PARTICULARLY THOSE

LOVING IN CLOSE CONJUNCTION WITH CONTINENTAL SHELF. INTERNATIONAL COMMUNITY MUST DEPEND UPON COASTAL STATE TO INSURE RATIONAL USE OF SUCH RESOURCES. HOWEVER, REGIONAL COMMISSIONS AND REGIONAL COOPERATION WOULD BE INVOLVED. MANKIND WOULD ONLY BENEFIT IF THERE WAS FULL AS WELL AS WISE USE OF RESOURCES. UNHARVESTED RESOURCES SHOULD NOT BE WASTED. US REP APPRECIATED IDEA STRESSED IN DRAFT ARTICLES OF OBLIGATION TO USE SCIENTIFIC RESEARCH INFORMATION TO INSURE PROPER USE OF LIVING RESOURCES. HIGHLY MIGRATORY SPECIES COULD NOT BE EFFECTIVELY REGULATED WITHIN ZONE OR AREA OFF COAST OF SINGLE COUNTRY AS THEY RANGED WIDELY OVER OCEANS AS A UNIT. CONSEQUENTLY, THEY MUST BE CONSERVED, MANAGED AND ALLOCATED AS A UNIT. US APPRECIATED RECOGNITION OF SPECIAL CONCERNS FOR SPECIAL STOCKS AND VIEW THAT SIMPLE SOLUTION WOULD NOT SOLVE COMPLEX CIRCUMSTANCES. ANADROMOUS STOCKS WERE PARTICULARLY DEPENDENT UPON INLAND WATERS OF COASTAL STATE. IT WAS COSTLY TO COASTAL STATE TO MAINTAIN THESE SPECIES AND THEY WERE MOST EFFICIENTLY HARVESTED NEAR COASTAL STATE SHORES. PROPER CONSERVATION MANAGEMENT WAS NECESSARY TO OBTAIN FISH NEEDED TO FILL WORLD-WIDE NEED FOR PROTEIN. INTERESTS OF THOSE WITH GEOGRAPHIC DISADVANTAGE SHOULD BE TAKEN INTO ACCOUNT IN CONSIDERING PRIVILEGES, RIGHTS AND CONTROL IN ZONE. LANDLOCKED STATES AND THOSE WITH SMALL COASTLINES RATED PREFERENCE AS DID THOSE WHO HAD ENGAGED IN FISHERIES FOR MANY YEARS. REP POINTED OUT THAT FISHERIES INVESTMENTS HAD BEEN MADE, OFTEN BY INDIVIDUALS WITH UNCLASSIFIED

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MODEST MEANS. COASTAL STATE MUST HAVE COMPETENCE TO RESERVE PORTION OF LIVING RESOURCES FOR ITSELF SUBJECT TO INTERNATIONAL GUIDELINES. DIFFERENCES WOULD OCCUR OVER QUESTIONS SUCH AS WHETHER RESOURCES WERE BEING CONSERVED AND HOW RESOURCES SHOULD BE ALLOCATED. IT WAS NECESSARY TO ESTABLISH MEANS FOR PEACEFUL SETTLEMENT OF DISPUTES. SPANISH REP HAD COMMENTED ON SCIENTIFIC RESEARCH. WORLD AS WHOLE NEEDED MORE KNOWLEDGE ABOUT OCEAN AND MEANS SHOULD BE FOUND TO STIMULATE SCIENTIFIC INQUIRY. THERE SHOULD BE MINIMUM OF RESTRICTIONS COUPLED WITH ADEQUATE PROTECTIONS FOR COASTAL STATES AND INTERNATIONAL COMMUNITY. EMPHASIS SHOULD BE ON HOW TO ENCOURAGE SCIENTIFIC RESEARCH RATHER THAN ON CONTROL, SO AS TO PROVIDE INFORMATION FOR RATIONAL MANAGEMENT OF RESOURCES. BENEFITS OF RESEARCH SHOULD BE SHARED AND USED FOR EVERYONE'S BENEFIT. IN AREAS OF WORLD WHERE NATIONAL BOUNDARIES WERE CLOSE TOGETHER, THERE WOULD BE MANY PROBLEMS IF EACH COASTAL STATE WERE TO DECIDE WHEN RESEARCH MIGHT BE CONDUCTED.

6. PERUVIAN REP ASKED US REP IF US WAS PREPARED TO

RECOGNIZE 200-MILE LIMIT FOR COASTAL STATE JURISDICTION. HE ALSO ASKED WHY COASTAL STATE SHOULD NOT CONTROL MIGRATORY SPECIES WHEN THEY WERE WITHIN THAT COASTAL STATE'S ZONE. US REP REPLIED THAT ISSUES SUCH AS DIFFERENTIATION AMONG SPECIES, BENEFITS FOR GEOGRAPHICALLY DISADVANTAGED STATES, FULL UTILIZATION OF LIVING RESOURCES, AND THEIR CONSERVATION WERE MORE IMPORTANT ISSUES THAN ANY OTHER MATTERS. WITH REGARD TO HIGHLY MIGRATORY SPECIES IT WAS INCONCEIVABLE THAT SINGLE STATE COULD EFFECTIVELY MANAGE SUCH MOBILE SPECIES. MOREOVER, THOSE HARVESTING MIGRATORY SPECIES BEYOND ANY COASTAL STATE AREA OR ZONE MUST HAVE INCENTIVES TO OBSERVE CONSERVATION RULES. ALLOCATION PROBLEM WAS RELATIVELY EASY TO SOLVE ONCE INTERNATIONAL ORGANIZATIONS WERE GIVEN COMPETENCE TO MAKE THAT DECISION. CHAIRMAN THEN ANNOUNCED THAT FISHERIES WOULD BE DISCUSSED AT NEXT MEETING OF WORKING GROUP.

7. NEW ZEALAND OPENED AFTERNOON DISCUSSION SC II
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(NOT WORKING GROUP) WITH COMMENTS ON RESOURCE ENTITLEMENT OF ISLANDS. REP WAS OPPOSED TO TURKISH SUGGESTION FOR STUDY OF ISLANDS BY INTERNATIONAL HYDROGRAPHIC OFFICE. NEW ZEALAND BELIEVED THAT APART FROM VERY EXCEPTIONAL CIRCUMSTANCES NO DISTINCTION COULD BE MADE BETWEEN ISLANDS AND CONTINENTAL LAND MASSES WITH REGARD TO ENTITLEMENT TO OCEAN RESOURCES.

8. INDIAN REP COMMENDED FIJIAN ARTICLES ON TERRITORIAL SEA AND INNOCENT PASSAGE. HE APPRECIATED EMPHASIS ON SAFETY OF NAVIGATION AND COASTAL STATE AUTHORITY TO DESIGNATE SEA LANES AND TRAFFIC SEPARATION SCHEMES IN CONFORMITY WITH INTERNATIONAL STANDARDS.

9. NORWEGIAN REP SUPPORTED UK EMPHASIS ON IMPORTANCE OF INTERNATIONAL FISHERIES ORGANIZATIONS AND STRONG ROLE FOR REGIONAL FISHERIES COMMISSIONS. NORWAY FAVORED MORE POWERS BEING GIVEN TO ICNAF TO ESTABLISH QUOTAS. NORWAY DIFFERED WITH UK OVER CAPABILITY OF INTERNATIONAL OR REGIONAL ORGANS TO PROTECT STOCKS FROM OVER-EXPLOITATION. THEY FAVORED MORE STRINGENT EQUIPMENT REGULATIONS AS TRAWLER FLEETS WOULD PREVENT EFFECTIVE REGULATIONS IN NEAR FUTURE. CONSERVATION ENTAILED COOPERATION BETWEEN BOTH COASTAL STATES AND INTERNATIONAL ORGANS.

10. ZAMBIAN REP FORMALLY PRESENTED DRAFT ARTICLES (A/AC.138/SC.II/L.41) ON ECONOMIC ZONE CO-SPONSORED BY UGANDA. HE NOTED WITH APPROVAL ARTICLE INOAU DECLARATION WHICH PROVIDED THAT LANDLOCKED AND OTHER DISADVANTAGED STATES WOULD SHARE IN EXPLOI-

TATION OF LIVING RESOURCES IN ZONE ON EQUAL BASIS WITH NATIONALS OF COASTAL STATE UNDER SUCH REGIONAL OR BILATERAL AGREEMENTS AS MIGHT BE AGREED UPON. REP REFERRED TO PROVISIONS OF 1958 GENEVA CONVENTIONS WHICH TENDED TO SUPPORT IDEA THAT LANDLOCKED STATES HAD "ACQUIRED RIGHTS" IN AREAS IN WHICH COASTAL STATES WERE NOW CLAIMING RESOURCE JURISDICTION. REP THEN REVIEWED DRAFT ARTICLES NOTING THAT LIMITS ON TERRITORIAL SEA AND ECONOMIC ZONE WERE NOT SPECIFIED. BASIC NOTION WAS ESTABLISHMENT OF REGIONAL OR UNCLASSIFIED

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SUB-REGIONAL ECONOMIC ZONE. REP STATED THAT HE MIGHT SUBSEQUENTLY PRESENT PAPER ON FREE ACCESS FOR LANDLOCKED STATES TO SEA.

11. UGANDA SPOKE WITH OBSERVER STATUS IN SUPPORT OF PROPOSAL SUBMITTED WITH ZAMBIA. AREA UNDER NATIONAL JURISDICTION DID NOT PRESENTLY BELONG TO ANY SINGLE STATE. UGANDA WOULD SUPPORT ANY GENERALLY ACCEPTABLE LIMIT FOR TERRITORIAL SEA. LANDLOCKED STATES CONCERN WAS NOT PRINCIPALLY WITH SHARING, BUT WITH TRANSIT RIGHTS TO SEA. HOWEVER, THEY DID DESIRE TO SHARE IN LIVING AND NON-LIVING RESOURCES IN ECONOMIC ZONE.

12. ICELANDIC REP EXPRESSED CONCERN OVER FACT THAT SUBCOMMITTEE WAS NOT CONCENTRATING ON FUNDAMENTAL ISSUES TO PRODUCE ALTERNATIVE TEXTS AND POINTED OUT TIME WAS RUNNING SHORT. PERHAPS MOST IMPORTANT ISSUE WAS EXTENT OF COASTAL STATE JURISDICTION OVER RESOURCES. REP THEN REVIEWED NUMBER OF PROPOSALS WHICH GAVE COASTAL STATE JURISDICTION OVER RESOURCES IN ECONOMIC ZONE OUT TO 200 MILES. REPLYING TO UK, REP STATED THAT ICELAND DID NOT SUPPORT WIDENING POWERS OF ICNAF BECAUSE QUOTA SYSTEM WAS USED AGAINST COASTAL STATE BROADENING JURISDICTION.

13. KENYAN REP (NJENGA) HAD DIFFICULTY FINDING "ANY POINT ON WHICH HE DID NOT DIFFER" WITH PROPOSAL SUBMITTED BY UGANDA AND ZAMBIA. HE STATED THAT OAU GROUP, PARTICULARLY COMMITTEE OF LOS EXPERTS OF WHICH HE WAS CHAIRMAN, HAD CCAREFULLY CONSIDERED IDEA OF REGIONAL ECONOMIC ZONE. PROPOSAL HAD BEEN REJECTED BY OAU COUNCIL OF MINISTERS. PERHAPS ZAMBIA AND UGANDA HAD NOT BEEN PROPERLY BRIEFED, BUT IN ANY CASE THEY COULD ONLY TALK FOR THEMSELVES AND NOT FOR OTHER ELEVEN AFRICAN LANDLOCKED STATES. HE ASKED WHO WOULD ESTABLISH ECONOMIC ZONE AND WHO WOULD ENFORCE JURISDICTION. HE CONCLUDED THAT KENYA WOULD NEVER ACCEPT PROVISIONS WHICH DISCRIMINATED AGAINST COASTAL STATES BASED ON PHILOSOPHY THAT "WHAT IS MINE IS MINE; WHAT IS YOURS, WE'LL SHARE".

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14. US REP (JOHN R. STEVENSON) ADDRESSED HIMSELF TO QUESTION OF FREEDOM OF TRANSIT THROUGH AND OVER INTERNATIONAL STRAITS. TEXT SENT SEPTEL.

15. GREEK REP THEN SPOKE ON PROPOSAL BY TUNISIA AND TURKEY TO DELETE ENTITLEMENT OF ISLANDS IN SANTO DOMINGO ARTICLES. ONCE AGAIN, HE STRESSED THAT ISLANDS SHOULD BE TREATED AS MAINLAND AND THAT, FAILING AGREEMENT, FUNDAMENTAL RULE WAS MEDIAN LINE.

16. CAMEROON REP STATED THAT PROPOSAL BY ZAMBIA AND UGANDA WAS SO FAR AHEAD OF ITS TIME THAT THERE WAS NO CHANCE FOR ITS PASSAGE. REP STATED THAT APPROACH WAS APPARENTLY FOUNDED ON ACQUIRED RIGHTS OF UGANDA AND ZAMBIA ON BASIS THAT ECONOMIC ZONE WAS SUBTRACTED FROM HIGH SEAS. HE POINTED OUT THAT HIGH SEAS FREEDOMS HAD NO REGIONAL SCOPE AND INDICATED HE COULD NOT UNDERSTAND BASIS FOR THEIR APPROACH.

17. SPANISH REP GAVE LENGTHY, PEDANTIC REPLY TO SOVIET STRAITS SPEECH GIVEN ON JULY 24. REP STATED THAT NO CUSTOMARY RULE OF FREE PASSAGE THROUGH STRAIT OF GIBRALTAR COULD EXIST BECAUSE EVEN IF CORPUS OR ACT EXISTED, ANIMUS OR SENSE OF JURIDICAL OBLIGATION DID NOT EXIST, AT LEAST IN SPAIN AND MOROCCO. FROM 1968-72 SPANISH HAD CAUGHT 70 VESSELS IN TERRITORIAL SEA IN STRAITS OF GIBRALTAR. NO STATES PROTESTED AND THIS WAS EVIDENCE OF LACK OF OPINIO JURIS. FACT THAT SOVIETS HAD BEEN ABLE TO PASS THROUGH STRAIT OF GIBRALTAR WITH OUT INTERRUPTION SHOULD NOT BE CONFUSED WITH RECOGNITION OF FREE TRANSIT. REP THEN STATED THAT SOVIET HAD ASSERTED FREE TRANSIT CONCEPT WAS RULE OF JUS COGENS. IF FREE TRANSIT WAS NEW IMPERATIVE NORM, ALL ESISTING TREATIES CONCERNING STRAITS WOULD BE NULL AND VOID. REP THEN DISCUSSED OTHER ARGUMENTS SUPPOSEDLY MADE BY SOVIETS AND POINTED OUT THAT FOREIGN WARSHIPS IN SOVIET STRAITS OVERLAPPED BY TERRITORIAL WATERS WERE REQUIRED TO OBTAIN PRIOR AUTHORIZATION BEFORE PASSING SPAIN WAS WILLING TO MAKE INNOCENT PASSAGE MORE PRECISE TO PROTECT INTERNATIONAL TRADE AND PEACEFUL PASSAGE, BUT UNTIL THEN, ESISTING DOCTRINE OF INNOCENT

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PASSAGE APPLIED IN STRAITS OF GILBRALTAR.

18. ZAMBIA REPLIED TO KENYA AND ASKED IF KENYA WAS BETTER REPRESENTATIVE OF LANDLOCKED STATES. IF

SO, PRACTICAL DEMONSTRATION OF THAT FACT AS WELL AS SPIRIT OF ACCOMMODATION WHICH KENYAN HAD MENTIONED WOULD BE APPRECIATED.

19. SOVIET REP STATED THAT SPANISH REP HAD INTRODUCED CONFUSION IN DEBATE AND HAD LEFT ASIDE SERIES OF LEGAL ARGUMENTS MADE BY USSR. SPANISH REP MUST REALIZE THAT MOST IMPORTANT FACTOR CONCERNING EXISTING CUSTOMARY LAW WAS RECOGNITION BY INTERNATIONAL COMMUNITY. PERHAPS SPANISH REP HAD OVERLOOKED THIS FACT DUE TO HIS EMOTIONAL STATE. SPANISH REP RESPONDED THAT HE WOULD GLADLY DISCUSS MATTER AD NAUSEUM IN PRIVATE WITH SOVIET REP AS HOUR WAS LATE. RUSSIAN RESPONSE WAS MERELY ANOTHER DOGMATIC ASSERTION WHICH SUBCOMMITTEE WAS EXPECTED TO ACCEPT AS ARTICLE OF FAITH. HE THEN TOLD STORY ABOUT ONE OF HIS JESUIT TEACHERS WHO HAD LEFT HIM TOTALLY CONFUSED. SOVIET REP REPLIED THAT SPANISH HAD CHARACTERIZED RUSSIAN SPEECH AS BEING BASED ON FAITH AND CLOSED HIS EYES TO LEGAL ARGUMENTS. PERHAPS THIS APPROACH WAS RESULT OF SPANISH REPS'S JESUIT UPBRINGING. BASSIN
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